

DEVELOPMENT OF COMPETITION AND ITS PROTECTION IN KOSOVO

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Abstract

This paper investigates development and protection of competition in Kosovo, legislative aspect of its adjustment, the most sensitive sectors where the competitions is damaged and finally are presented the measures on improvement based on the EU practices. To the economies in transition as Kosovo is, three types of anti competition practices that are object of the law on competition draw particular importance. This anti-competition practices are: prohibited agreements-cartels, mergers of enterprises and misuse of dominant position of the enterprises that have relevant influence on the market. Competition damage in those economies may be done in two directions: from the side of enterprises that make agreements, mergers, abuse with the dominant position and in these activities they damage the market structure, at the other hand the state by creating legal monopolies, giving the exclusive rights and other activities that may create discrimination as well as from the non-transparence of the politics of state aid.

Keywords: Competition, Financial sector, Kosovo

Historical, political and economical environment

1.1 Historical Environment

Kosovo is situated in the middle of the South-East Europe, positioned in the center of Balkan Peninsula. It represents an important crossroad between South Europe and Middle Europe, Adriatic sea and Black sea. The Kosovo's area is 10.908 km². It is forecasted that Kosovo has approximately 2 million residents and the density of the population is around 193 persons per km², and it is divided in 33 Municipalities. In April of 2011 has been organized the general registration

of the population, apartments and households, but the Statistical Office of Kosovo has not come out with the final results of this. The last registration of the population has taken place in 1981.

Political environment

Kosovo was under UNMIK administration since 1999. During this time Kosovo was administered by United Nations Mission and Provisional Institutions of Self-Government, while the security issues were trusted to NATO- (KFOR) troops. On 17th February 2008 the Kosovo's Assembly has declare the independence of Kosovo, based on Marti Ahtisari plan and under the supervision of the EU Mission EULEX. The Kosovo's independence has been recognized most democratic countries of the world where with now is created a new reality in Kosovo and South-East Europe. The recognitions are in the process and 89 countries have recognized the Kosovo's independence so far.

Economical environment

After the conflict, Kosovo began to build economical policies oriented towards market economy. These economical policies include building and implementation of modern concepts of market economies, EU rules and most advanced international standards. After the conflict owing to international assistance and donations Kosovo has achieved to enclose emergency phase very successfully. This is the foundation of the institutions and sustainable economy and its integration with other economies in region and world wide. The Gross Domestic Production (GDP) of Kosovo has been increased every year since 2006. For example: there was a growth of real GDP–4.0% in 2006, in 2007 there was a growth of GDP 4.0%, in 2008–5.4%, in 2009–4.0%, 2010–5.0% growth of real GDP. The last macroeconomic projections the average growth of real GDP during the planned period 2011-2013 is expected to be 5.6%. In this growth of GDP shall contribute the growth public capital investments and concentration of these expenditures in large projects as well as the growth of new private investments. Approximately 40% of Kosovo's citizens are unemployed (the unemployment of youth is estimated to be 50% to 75%). Every year 30,000 new work force are available to the job market. There should be an economic growth of 7% for a 15 years period to reduce the level of unemployment in half. The young population of Kosovo mostly (50 % of the overall population is 25 years old) presents a challenge and opportunity.¹

¹ <http://mef-rks.org>. Ministry of Finance of the Republic of Kosovo

Privatization in Kosovo

The mission of the Kosovo Privatization Agency is administration, support, sale and liquidation of the Social owned enterprises (SDE) and their assets in compliance with law on foundation of the Kosovo Privatization Agency. The KPA continues the privatization of the social owned enterprises by using two methods: Spin-off method and Voluntary Liquidation. Based on the reports of Kosovo Privatization Agency (KPA) there have been privatized 290 enterprises so far, and it is realized over than 520 million euro revenues in the credit fund. Now KPA has finalized the process initiated earlier for the amendments of current legislation and harmonization of this legislation with the Constitution of the Republic of Kosovo, as vital amendments on the Law of KPA, then promulgation of the Law on Special Chamber. Over than 599 Social Owned Enterprises have been identified as a potential enterprises representing the actual portfolio of the agency which KPA shall privatize or liquidate them with the fully and best transparency of the Kosovo's economy. Currently KPA is in the 52nd wave of privatization. Concessioning the Pristina International airport, preparation of the bids for privatization of the PostTelecom (VALA), and preparation of the bidding documents for privatization of the energy sector (distribution of the energy) shall have the great impact in Kosovo's economy.²

Energy

The deficiency in credible supply of electricity is the main obstacle for the development of private sector and economic growth in Kosovo. Electricity sector is also one of the sectors which expend a part of national budget due to the continues subvention for import of energy. In 2009 and 2010 this import was at the level of 40–60 million € per year. The existing power plants (Kosova A and B) are old and not in a good state and always exposes to risk of large break up. The both power plants run on coal as the only fuel available in Kosovo. The general reform of the sector includes the privatization and it is very crucial to achieve this by attracting new financially and technically well prepared investors. As signatory of Energy Community Treaty for South-East Europe (ECT), reform and restructuring of Kosovo's energy sector shall respect the obligations and requirements of the ECT as well as EU obligations for markets and environmental standards.³

² <http://www.pak-ks.org>. Kosovo Privatization Agency

³ <http://mem.rks-gov.net>. Ministry of Economic Development

Financial sector

The banking sector in Kosovo and the development of financial system has been done after 1999, based on market principles and it was a very important element to Kosovo's economy. Foundation of Banking and Payment Authority in 1999 and latter in 2008 was transformed in Central Bank of the Republic of Kosovo presents an important success in this sector. Banking sector is consisted by two levels. Where the Central Bank of Kosovo operates as bank of first level and commercial banks who operate as banks of second level. Banking system forms an important component of Kosovo's financial system consisted of banking sector, insurance market and micro financial institutions. Now in Kosovo operate 8 commercial banks, two most important are: Pro-Credit Bank and Reiffesien Bank which their creditation and their deposits cover approximately 68%. There is a high concentration of the banks. At the same time should be highlighted that the continuous growth of activity of small banks has influenced that concentration level in a banking market to be reduced continuously since the anticipatory year.⁴

Telecommunication

Telecommunication and business operators in the field of telecommunication offer a good quality of their services, but the prices for some products are still highest in the region (roaming calls). For this reason the development of competition in this field remains a permanent challenge. There are two business operators in the field of telecommunication so far Vala 900 and Ipkonet. Vala 900 has taken the possession the assets of Kosovo's Post and Telecom and it's in the phase of privatization. Regarding to the mobile phone market have been licensed two network business operators (2G-MNO) by TRA: In 2004, PTK-Vala was licensed in the waves 900MHz, and in 2007 was licensed the consortium IPKO/Telecom Slovenija/Mobitel (waves 900/1800MHz). After approval of the framework for Mobile Virtual Network Operator (MVNO) by Telecommunication Regulatory Authority in May of 2008 have been licensed another two operators in the field of telecommunication: Dukagjini Telecommunications (D3mobile) operates based on the commercial agreement with *IPKO*, and Dardafon.net (Zmobile) has signed the agreement with public company *PTK/VALA*. Even that all telecommunication services are liberalized, even so there is an authentic competition in the sector of internet services and mobile telephony, and whereas for cable

⁴ <http://www.bqk-kos.org>. Central Bank of Kosovo, Annual report 2010

telephone services we can say that they are partly competitive. The problem in this field presents that Kosovo does not have its own international code.⁵

Investment environment

The business environment in the Republic of Kosovo is becoming more and more competitive. The continuous efforts in improvement of tax system, usage of natural resources, comparative advantages we are having with others fast and easy registration of business, permanent improvement of the road infrastructure, transparent laws for foreign investments, etc, become the Kosovo's environment more attractive and favorable for investors. Still needs to be done more in this way.⁶

History of functioning of competition policy in Kosovo

Kosovo Competition Commission has been founded by a decision of the Assembly of the Republic of Kosovo, in 2008, but in fact was active in March 2009. Now the competition in Kosovo is regulated by the Law on Protection of Competition nr.03/l-229, of October 7th 2010 (official gazette of Republic of Kosovo). This law amended the Law 2004/36.

The law set out the opportunity of market monitoring by two methods:

- By controlling actions of enterprises, and
- By controlling the market structure

Legal aspect of the competition control–Law on Protection of Competition

The Constitution of the Republic of Kosovo, article 10 lays down economic system of Kosovo as a system based in free market economy and freedom of economic activity. Free market means the economy where the decision about production and consumption are taken by individuals and private companies. Private companies produce products bringing profit, whereas the consumption is defined by individuals who benefits from their work or ownership. Price, quantity and production method is set out by market. To fulfill this function the market must have competition rules and such rules to be implemented. There shall not be a free market economy where the production opportunities are kept away from companies with dominant position in market, whether they are private or public. When a company achieves to have a considerable position in market

⁵ <http://www.art-ks.org>, Telecommunication Regulatory Authority ,annual report 2010

⁶ <http://www.mti-ks.org>, Ministry of Trade and Industry

(point where the demand equals with offer), by this company itself. In this case consumers are not able to play their role in setting the prices and are affected by loosing.

The difference between the investigation of agreements and the dominant position from one side and concentration of companies in the pother side consists by analyzing two cases: in the first case is based on:

- Past (is performed *ex post*), whereas in the second case
- Is based prognosis for the future (performed *ex ante*)

Law on protection of competition respects share of control *ex ante and ex post*, by treating from one side forbidden agreements and excluding from prohibition and abuse of the companies in dominant position and the other side anticipatory control of concentrations. In the other part the law lays down the competition authority as responsible body for law implementation.

The objective and the field of implementation of the law on Protection of Competition

The objective of the law on Protection is the protection of the free and effective competition in the market. This can be achieved by setting rules for actions of the companies. Market participants are clients and consumers demanding goods and services from the companies which are offering them. The law lays down economical rules of these participants with the view to make them act fairly in the competition. By protection of legal interest of every participant in the market, in this way can be indirectly protected fair competition.

a) Prohibited agreements

The Law on protection of competition determines the term “agreement” as agreement of any form, signed by companies with or without obligatory power, decisions or recommendations of the groupings of the companies as well as coordinated practices between companies acting in the same level, which means horizontal agreements or in different levels, vertically.⁷ The agreement with the meaning of this law can be contracts or other agreements between companies, even when they do not have obligatory power, and other acts «unilateral», as are the recommendations of the associations of the companies.

b) Abuse of the dominant position

⁷ Law Nr. 03/ L-229, 7 octomer 2010 , For Pretecton of Competition.

Pursuant to Law on Protection of Competition, any abuse by one or more companies with dominant position is prohibited. A company can be considered to have a dominant position if the participation in the market of such company is more than (40%). This participation is not considered dominant position if such company can argue that is exposed in front of competition or does not have superior position in the market comparing with other competitors.

c) Concentrations between companies

Article 13 of the law treats the system of authorizations about concentrations of the large commercial companies. According to this article; the concentration between companies is considered the union of two or more companies, to benefit the control in one or more companies as well as foundation of a joined company.⁸

d) Competition advocacy

Competition advocacy is an important element of the competition policies in the economies in transition, also for Kosovo's economy. It reflects comments provided (offered) by competition authorities for the impact of competition in other policies, particularly in the field of regulative policies and privatization. Benefits coming out by incorporation of the competition principles in the laws and regulations are very high, in particular for economies in transition have privatized infrastructure network for which there was no adequate regulatory expertise. The competition advocacy is not only one of the law standards, but it is a vital need for activities of the competition authority to have a real influence in achievement of functional market.

The most sensitive sectors where the competition in Kosovo is violated

The law on competition is implemented in all fields where there is a violation of the competition. Correction of unfair competition is oriented in those fields where economic subjects have relevant influence in the market. The reason of investigation and their correction consists that these large companies have influence in the market and easy control such market. Some of the most sensitive sectors are:

- Telecommunication (telephony operators, fix prices and agreements for fixing of the prices, share of the products and market),
- Insurance Companies (insurance policies, agreements in price fixing for services offered),

⁸ Regulation (EEC) no 4064/89 "Merger Procedure"

- Banking system (unique price fixing for interest rates for the services offered by banks, payments and other provisions),
- Import of oil (agreements on price fixing, share of market, geographical and regional share of market),
- Energy sector (fixing of tariffs for electricity and other forms of monopoly),
- Health sector (granting of license for import of medicines or for import of only one medicinal product),
- Procurement sector (tendering without economical justification and disorganization of market and competition),
- Media (granting of different licenses for operation with frequencies) and others.

Conclusion

Based on the researches made by scientific literature, other resources taken by national and international institutions dealing with competition issues and competition protection, as well as the Kosovo Competition Authority as institution who implements the law on protection of competition, the protection and development of competition must be oriented in two main directions: 1). Permanent correction of forbidden agreements, control of concentrations and market analyses and competition in the market, and 2) Reading of the laws and other by-law documents who may create favors and certain monopolies and their improvement. Particularly, it is very important to have more advocacies regarding to the importance of competition and introduction to law on protection of competition. There is a need that the authority should have regular cooperation with economic regulatory bodies with a view to create fair competition (energy regulatory office, telecommunication regulatory office, media, procurement, etc). The market liberalization must take place with a view to increase the number of business operators, particularly those who have relevant influence in the market. More political support must be given to the Kosovo Competition Commission who implements the Law on Protection of Competition; this institution must be independent body and should not be under the influence of the politics. Penalties and other sanctions must be lowest and these sanctions to be taken as the last measure. There is a need to be implemented the Law on State Aid, which was adopted by the Assembly of Kosovo in July 2011 and entered into force on 1st January 2012 and these assistances to be

monitored by Competition Authority with a view to not disorganize the market and different favours harming the market economy.

All these acts shall create sustainable environment for further development of free competition and its protection, as one the fundamental condition for sustainable economic development and protection of consumer health.

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